

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTHA CASTRO

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 190,478

ORDER

Claimant appealed Administrative Law Judge Pamela J. Fuller's May 11, 2000, Decision. Appeals Board Member Gary M. Korte recused himself from these proceedings, and Stacy Parkinson has been appointed to serve as Appeals Board Member Pro Tem in Mr. Korte's place. The Appeals Board heard oral argument on October 18, 2000.

APPEARANCES

Claimant appeared by her attorney, Thomas R. Fields of Kansas City, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Gregory D. Worth of Lenexa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the May 11, 2000, Decision.

ISSUES

While claimant was employed by the respondent, she suffered bilateral carpal tunnel syndrome injuries and a left shoulder subacromial syndrome injury caused by her repetitive work activities. The last day claimant worked for the respondent was May 20, 1994. The Administrative Law Judge in a July 20, 1999, Decision awarded claimant a 13 percent permanent partial general disability based on permanent functional impairment. Future medical treatment was granted only upon proper application to and approval by the Director of Workers Compensation.

That decision was timely appealed to the Appeals Board. In a April 27, 2000, Order, the Appeals Board awarded claimant a 57 percent permanent partial general disability based on a work disability. The Appeals Board also approved and adopted all other orders entered by the Administrative Law Judge in the July 20, 1999, Decision.

On November 17, 1999, the claimant filed an Application for Review and Modification of the July 20, 1999, Decision pursuant to K.S.A. 44-528(a). The application alleged claimant was in need of medical treatment for her work-related injuries. The claimant requested that such medical treatment be provided by one of her previous authorized treating physicians, Guillermo Garcia, M.D. Additionally, at the review and modification hearing held before the Administrative Law Judge, claimant also requested payment of recent medical expenses incurred by claimant for medical treatment provided by Dr. Garcia. Further, the claimant requested the Administrative Law Judge to order respondent to pay her attorney reasonable attorney fees and costs incurred for services rendered in connection with the review and modification proceeding.

The Administrative Law Judge found claimant had failed to prove her current need for medical treatment was related to her March 14, 1994, work-related accident. The Administrative Law Judge, thereafter, denied claimant's request for medical treatment, payment of medical expenses as authorized, and attorney fees.

On appeal, the claimant contends she proved, through her testimony and Dr. Garcia's medical treatment records, that her current need for medical treatment was directly related to her March 14, 1994, accident. The claimant requests the Appeals Board to reverse the Administrative Law Judge's Decision and order respondent to provide claimant with the necessary medical treatment to treat her upper extremity injuries, payment of the past medical expenses as authorized medical, and to order respondent to pay claimant's attorney a reasonable attorney fee for services rendered in connection with the review and modification proceedings.

In contrast, respondent requests the Appeals Board to affirm the Administrative Law Judge's Decision that denied claimant's request to modify the award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board finds the Administrative Law Judge's Decision should be affirmed.

The findings of fact and conclusions of law set forth in the Administrative Law Judge's Decision are found to be accurate and are adopted by the Appeals Board. In particular, the Appeals Board finds significant that the last day claimant worked for respondent was May 20, 1994, and she has since worked in various other jobs requiring her to use her upper extremities. Also significant is the fact that claimant was released

from medical treatment for her March 14, 1994, work injuries in 1996 and did not seek any further medical treatment until she again returned on her own to see Dr. Garcia on May 27, 1999.

Dr. Garcia's medical record of May 27, 1999, indicates that claimant gave a history of complaints of tingling and numbness in her hands for the last three weeks. Additionally, claimant was asked during the review and modification hearing if following her 1994 surgeries, "did you tell him (Dr. Garcia) that the problems with tingling and numbness improved . . . ?" Claimant answered, "Yes." Claimant also answered, "Yes" to a follow up question indicating that she did not have any tingling and numbness problems after surgery until three weeks prior to her May 27, 1999, appointment with Dr. Garcia.

The Appeals Board also finds it is significant that Dr. Garcia's medical records indicate a diagnosis of relapse of bilateral carpal tunnel syndrome. But those medical records do not express an opinion on whether this relapse is a direct result of her March 14, 1994, work accident or whether the relapse was caused by to her subsequent employment activities.

The Appeals Board, therefore, affirms the Administrative Law Judge's conclusion that claimant failed to prove her current need for medical treatment was related to her March 14, 1994, work-related accident.

The Appeals Board also affirms the Administrative Law Judge's Decision to deny claimant's request to order respondent to pay medical expenses incurred by the claimant when she returned to see Dr. Garcia on May 27, 1999, and through her last appointment with Dr. Garcia on August 19, 1999. Specified in the Administrative Law Judge's July 20, 1999, Decision and adopted by the Appeals Board in its April 27, 2000, Order, future medical treatment for claimant's March 14, 1994, work-related injuries would be ordered only upon proper application to and approval by the Director of Workers Compensation. Claimant testified that her attorney advised her to seek medical treatment with Dr. Garcia without requesting approval. The Appeals Board finds that, before any future medical treatment could be authorized, it had to be approved by the respondent or by the Director of Workers Compensation.

The Appeals Board also affirms the Administrative Law Judge's Decision that denied claimant's request for attorney fees and costs. Claimant's attorney did not place into evidence before the Administrative Law Judge any type of itemized statement showing the time that was spent and the hourly rate charged in connection with services rendered in the review and modification proceedings. Furthermore, when an attorney renders services to an employee in connection with an Application for Review and Modification and additional compensation is denied, the statute provides the Director *may* instead of *shall*

authorize an attorney fee to be paid by the respondent.¹ In this case, the Administrative Law Judge decided an attorney fee should not be awarded, and the Appeals Board approves that decision. The record presented fell well short of sustaining claimant's burden of proof. In fact, there was no expert testimony to support claimant's causation theory.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's May 11, 2000, Decision should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas R. Fields, Kansas City, KS
Gregory D. Worth, Lenexa, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director

¹See K.S.A. 1999 Supp. 44-536(g).